

THE DOCTOR'S DILEMMA
A Supreme court judgement on death by hanging violates medical ethics

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On Friday January 20, 1995 when the newspapers reported a ruling of two judge bench of the Supreme Court on the practice of keeping the body of the condemned prisoner hanging for half an hour in the legal practice of death penalty in India, it was implied that the Court was taking a humanitarian stand. This ruling while bolstering the inhuman practice of death penalty violates the medical ethics of the doctor certifying death of such prisoner has escaped attention of most of the readers.

The public interest in which the Supreme Court ruled that the victim should not be kept hanging for half an hour was filed by a lawyer, Mr. Parmanand Katara. Like doctors who helped the state in the past to devise newer methods of execution, he was also moved by the humanitarian concerns. He felt that the stipulation in the Punjab Jail Manual to keep the body hanging for so long was barbarous and violated Article 21 of the Constitution, namely, right to live with dignity. He also recommended that instead of hanging, the condemned prisoner should be administered potassium cyanide for a painless death! This recommendation was however rejected by the Court.

Unfortunately the issue of 'death penalty' issue has not generated in India, the informed debate it deserves. While its supporters have continuously strengthened their position, more so after the increase in violence in society its opponents have wavered. For instance, six prominent individuals of Bombay in an interview to the Indian Express (April 5, 1993) immediately after the bomb blasts declared that the death penalty is a great deterrent. Two of them, Mrinal Gore (politician and woman activist) and Padmanabh Shetty (a trade unionist), were fierce opponents of the death penalty earlier, and the latter had, not distant past. Others who justified death penalty included a former administrator, S.S. Tinaikar, industrialist, S.P. Godrej, a professor and known Marxist, KK Theckedath and a dean of KEM Hospital, Dr. Pragnya Pai.

A firsthand experience of violence, or being witness to it from close quarters, can be disturbing experience, and changes one's outlook to the social reality faster than all discourses on the subject. Which is why, after experiencing and witnessing it closely in the last few years we find more supporters of death penalty in our country today. In this context the arguments of the penalty opponents seem weak and have created a space of hard-core supporters and death penalty.

In 1980 in *Bachan Singh v. State of Punjab*, the Supreme court, by a four-to-one majority (Justice Mr. Bhagwati being the sole dissenter) verdict ruled that the death penalty is constitutionally valid, and does not constitute an "unreasonable, cruel or unusual punishment". It was also observed that acceptance by India of the United Nation's "International Covenant on Civil and Political Rights" does not affect the constitutional validity of the death sentence. The death penalty is thus considered to be a deterrent to serious crime. However, it is conveniently forgotten that the rise in India of communal, caste and terrorist violence has taken place despite the existence of death penalty in the law books and the courts favouring its implementation.

Essentially the Government and the Court favour death penalty as a deterrent to serious crime and once this underlying principle is accepted, the rest of the discussion would only revolve around finding reasonable and humane methods of death penalty. The history of the death penalty is replete with numerous such seekers of humane methods of death penalty.

Paradoxically, the most prominent amongst them are doctors. The doctors did this as they accepted the principles underlying the objectives of the death penalty and thus thought that it would be better to concentrate on designing humane methods of putting a person to death! Thus, the earliest recorded evidence show Dr. Antoine Louis designing and testing and Dr. Joseph-Ignac Guillotine advocating the use of a death machine in late 18th century in France. This beheading or decapitating machine became famous by the latter's name (Guillotine) and was extensively used to put tens of thousand people to death. The British committee of 1886 which recommended hanging as a more humane method also had five doctors on it, and they did not dissent on the recommendation made. Fittingly, the famous electric chair was designed by an opponent of hanging and a dentist, Dr. Alfred Southwick. In the USA now the apparently medical execution (lethal injection) has given way to other medically designed methods.

While one wonders whether the death by hanging for less than half an hour becomes more humane than that by hanging for half an hour, the Court ruling puts the doctors in the unenviable position.

The doctors also participate, though usually indirectly, in the execution itself. Two modes are well known: certifying the condemned person fit for the death penalty and to certify him or her dead at the end of the execution. In the former, even for a doctor who advocates death penalty, it would be impossible to find medical criteria to certify a human being fit for death. It cannot be done without bending medical ethics in an opportunistic manner. The ethical dilemma involved in certifying prisoner fit for death has been subject of many stories and films, the famous one in Hindi cinema being Gulzar's *Achanak* where the doctor, after successfully performing a complicated life saving operation over the prisoner, realises that it was only for making him fit for the death penalty.

The ruling also states that the jail authorities shall not permit the body of an executed convict to remain hanging for half an hour after falling from the scaffold. Instead, as per press reports, the Honourable Judges felt that a convict shall remain hanging only till he is declared dead by the medical officer). The ruling further states that the body be released as soon as the doctors certified that there was no life left in it. The doctor's ethical dilemma in certifying death is less known than that involved in certifying a prisoner fit for execution.

The present ruling implies that after hanging, at short intervals, the doctor will be examining the victim at short intervals to find out whether he or she is dead. The body could be brought down as soon as found lifeless and thus not necessitating the mandatory hanging for half an hour. This means two things for the doctors: Firstly, the doctor would be examining the victim who is in the hanging position. Secondly, in order to bring down the body as soon as it is dead, the frequency of such examination will be high, till the last examination when the convict is found positively dead. Now what should a doctor do when he or she finds a person, hanging with life still in his body?

Should the doctor inform the prison authorities of this to keep until dead? Or should a doctor, in compliance with his or her oath of upholding ethics, get the body down and try to resuscitate the convict? And can any court order the doctors to violate their professional ethics by suggesting that the doctors allow the hanging person die, even after finding him or her alive on medical examination, and not make efforts to resuscitate simply because he or she is ordered to die by a court of law? Simply put, when the doctor faces ethical dilemma due to two conflicting orders (the administrative or legal order to allow a person with life die and the ethical duty to save), which one should be upheld? This is a fundamental issue as the humanitarian and noble basis of medical profession is founded on the autonomy and assertiveness shown by the profession in upholding its ethics in face of all odds.

In the 1970s and 80s, the trend within the medical profession in the developed countries had been to refrain from assisting in the death penalty in as many ways as possible. Here the principle of doctor's *non-participation* is used and not that of opposition to the death penalty. This obviously is to get a larger support base from the profession, so that even those doctors,

who believe in death penalty but only oppose doctors' participation in it, could also support it. Thus, in many European countries and in the North America, doctors' associations have passed resolutions and obtained government approval that doctor would not be ordered to participate in any way in awarding or in executing the death penalty.

It should be pointed out that non-participation is only a passive exercise of medical ethics. It could also be construed as the doctors using their privileges to wriggle out of the problematic situation while the hangman, warden, police person etc. have no choice but to continue participating. Will the medical profession use such a privileged position for its passive exercise of ethics by non-participation and then, muster enough strength by campaigning to eliminate death penalty from the society. It remains to be seen.

The Supreme Court ruling puts the doctors in the spotlight. If Indian doctors bow to the unethical implications of the ruling, they will undermine their own credibility and in long run, privileges. It will establish a norm that the state can order doctors to participate directly or indirectly in putting a person to death, or for that matter in torture. Nazi doctors of Germany had also accepted such state orders and ideology and history has witnessed the consequences. Will Indian doctors learn from history and instead of fighting against the consumer rights, at least once, fight for the preservation of their ethics?

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